

## **REMARKS**

Applicant wishes to thank the Examiner for the attention accorded to the instant application, and respectfully requests reconsideration of the application as amended.

### **Formal Matters**

Applicant requests that this amendment submitted under 37 CFR § 1.114 along with a Request for Continued Examination (RCE) be entered and the examination of the application be continued.

Claims 76-98 are currently pending in the application; claims 1-75 have previously been canceled. Claims 76 and 98 are amended to more clearly recite the invention, including “pseudo-randomly permuting a sequence of instructions within the executable file” and identifying instructions and/or variables at pseudo-randomly chosen locations. Support for this amendment can be found in the specification on page 32, lines 6-9. Claims 77, 82-86, 89, 90, and 92-95 are amended to correct informalities, including the removal of the non-functional language “is adapted to” and “a provision of”. No new matter has been added.

### **Summary of Telephone Interview**

Applicant thanks the Examiner for the telephone interview of January 29, 2008. In this interview, the Examiner suggested that, to overcome the prior art, additional features be added to the claims in accordance with the specification. The Examiner also recommended that non-functional language, e.g. “is adapted to” be deleted from the claims.

### **Response To Rejections Under 35 U.S.C. § 102**

The Examiner rejected claims 76-98 under 35 U.S.C. § 102(e) as being anticipated by Krishnan et al., U.S. Patent 6,141,698 (hereinafter “Krishnan”). This rejection should be withdrawn based on the comments and remarks herein.

Krishnan teaches dividing the original executable code into encrypted blocks or a set of “conceptual chunks” of instructions (column 12, lines 6-15). The idea is that in each chunk, there is a single instruction through which the control flow enters the chunk and a single instruction through which the control flow leaves the chunk (column 13, lines 42-45). Krishnan discloses a corresponding algorithm, illustrated in Figure 12, that starts with a default chunk size and enlarges the chunk until the above constraints hold for the chunk. Krishnan does not use the results of this analysis to add new code to the original executable code.

In contrast to these known methods, the present invention allows for randomly permuting instructions within the executable file, identifying instructions at pseudo-randomly chosen locations, and inserting new code between these identified instructions of the original executable code. This is neither known from nor suggested by Krishnan. In particular, Krishnan does not disclose or suggest either “pseudo-randomly permuting a sequence of instructions within the executable file” or “identifying one or more instructions of the sequence of instructions ... at pseudo-randomly chosen locations” as recited in independent claims 76 and 98.

It has been held by the courts that “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Company et al.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). As illustrated

above, Krishnan does not disclose either pseudo-randomly permuting instructions or identifying instructions at pseudo-random locations, so that Krishnan does not disclose every feature of the invention as recited in independent claims 76 and 98. Consequently, these claims are not anticipated by the art of record in the application. Claims 77-97 depend from claim 76, each dependent claim incorporating all of the features of the base claim. Thus, these dependent claims are not anticipated by the art of record in the application for at least the reasons that the base claim is not anticipated by the art of record in the application. Accordingly, this rejection should be withdrawn.

#### **Conclusion**

In light of the foregoing, Applicant respectfully submits that all pending claims recite patentable subject matter, and kindly solicits an early and favorable indication of allowability. If the Examiner has any reservation in allowing the claims, and believes a telephone interview would advance prosecution, he is kindly requested to telephone the undersigned at his earliest convenience.

Respectfully submitted,



Katherine R. Vieyra  
Registration No. 47,155

SCULLY, SCOTT, MURPHY & PRESSER, P.C.  
400 Garden City Plaza, Suite 300  
Garden City, New York 11530  
(516) 742-4343

KRV:jam